

DISCUSSION OF THE AMENDMENT

Claim 1 has been amended by excluding benzyl alcohol from the claimed composition. Since benzyl alcohol is described as applicable but not required, as follows from the disclosure at the paragraph bridging pages 8 and 9 of the specification, and the examples, some of which contain benzyl alcohol, such as Example 5, and some of which do not, such as Examples 1-4, the amendment complies with the written description requirement.

In re Johnson, 558 F.2d 1008, 194 USPQ 187 (CCPA 1977) (holding that a claim to a genus with a recital of a negative proviso that did not appear in the specification complied with the description requirement.)

Claims 7 and 12 have been amended to be consistent with the above-discussed amendment to Claim 1.

New Claims 21 and 22 have been added, as supported by, for example, Claims 7 and 1, respectively.

No new matter is believed to have been added by the above amendment. Claims 1, 4, 5, 7, 9-16 and 18-22 are now pending in the application. Of these claims, Claim 20 stands withdrawn from consideration.

REMARKS

Applicants thank the Examiner for the courtesy extended to Applicants' attorney during the interview held August 5, 2009, in the above-identified application. During the interview, Applicants' attorney queried whether an RCE could be used for examination of non-elected Claim 20. The Examiner indicated that a divisional application was the appropriate vehicle. Thus, the discussion is now moot.

The rejections under 35 U.S.C. § 103(a) of:

Claims 1, 4, 5, 7, 9-12, 15, 16, 18 and 19 as unpatentable over US 6,528,070 (Bratescu et al) in view of US 6,171,515 (Evans et al) and US 6,262,007 (Scialla et al),

Claims 13 and 14 as unpatentable over Bratescu et al in view of Evans et al and Scialla et al, and further in view of EP 181,773 (Grote et al),

are respectfully traversed.

The disclosures of Bratescu et al, Evans et al and Scialla et al and the deficiencies in their combination, have been discussed in previous responses, which responses are hereby incorporated by reference.

Grote et al discloses a conditioning shampoo comprising, by weight, 5-70% of synthetic surfactant, 0.01-10% of a dispersed, non-volatile silicone, 0.5-5% of long chain acyl derivatives as a suspending agent in the form of crystals, and water (page 2, lines 42-46). Optional components may be present, such as benzyl alcohol preservatives, the components used individually at a level of from 0.01-10% (paragraph bridging pages 5 and 6).

The Examiner finds that Bratescu et al does not disclose the specific amounts of carboxylic acids, specific silicone derivatives or a composition having the specific pH containing an anionic surfactant, a carboxylic acid, a silicone derivative, and the other requisite components of the composition in the specific amounts as recited by the present claims.

The Examiner holds that it would have been obvious to one of ordinary skill in the art to employ the specific silicone derivative of Evans et al and an acid pH adjusting agent such as succinic acid or maleic acid, as disclosed by Scialla et al, in the composition of Bratescu et al.

For Claims 13 and 14, the Examiner holds that it would have been obvious to one of ordinary skill in the art to employ the benzyl alcohol of Bratescu et al in amounts disclosed by Grote et al.

In response to arguments made in the previous response that none of the applied prior art disclose or suggest Component (d) of the present claims, the Examiner now relies on the disclosure in Bratescu et al of benzyl alcohol as a preservative.

In reply, benzyl alcohol is now excluded from the scope of the present claims. None of the applied prior art discloses or suggests the presently-claimed invention.

New Claim 21 is separately patentable, because none of the applied prior art discloses or suggests the presence of 2-benzyloxyethanol.

New Claim 22 is separately patentable, because none of the applied prior art discloses or suggests a composition wherein an organic solvent is selected from the group consisting of (d2), (d3), (d4), (d5), and mixtures thereof.

For all the above reasons, it is respectfully requested that this rejection be withdrawn.

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Reply to Final Office Action of April 30, 2009

All of the presently-pending claims in this application are now believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Respectfully submitted,

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